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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,215	11/15/2006	Johannes Deichmann	502901-341PUS	2212
27799	7590	05/22/2009	EXAMINER	
COHEN, PONTANI, LIEBERMAN & PAVANE LLP			FREAY, CHARLES GRANT	
551 FIFTH AVENUE				
SUITE 1210			ART UNIT	PAPER NUMBER
NEW YORK, NY 10176			3746	
			MAIL DATE	DELIVERY MODE
			05/22/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/571,215 Charles G. Freay	DEICHMANN ET AL. Art Unit 3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 January 2009.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

This office action is in response to the Amendment of January 28, 2009. Before and by making the rejections set forth below the examiner has considered and addressed each of the applicant's arguments.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 6-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemmner et al as set forth in the previous office action.

Claims 1, 3-5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwai et al as set forth in the previous office action.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al as set forth in the previous office action.

Response to Arguments

Applicant's arguments filed January 28, 2009 have been fully considered but they are not persuasive. The applicant's arguments center on the positions that the Kemmner et al, Iwai et al and Fischer references do not disclose expansion joints. With respect to Kemmner et al the applicant argues that "apart from describing the materials

from which the two walls are manufactured" Kemmner et al does not teach or suggest an expansion joint. With respect to Iwai et al the applicant argues the "Iwai makes absolutely no mention of the materials from which the pump base 1 is manufactured" and therefore one of ordinary skill would not recognize the Iwai structure as an expansion joint. Similarly, with regards to Fischer the applicant notes that the fuel pump are made from rigid, wear resistant materials and therefore there is no suggestion that the Fischer et al device includes an expansion joint as required by the claims.

The examiner disagrees with the applicant's analysis. Firstly the examiner notes that classifying a structure as an "expansion joint" is not material dependant. As evidence of this the examiner references the five newly cited references which all disclose pumps having an impeller located between two housing elements one of which includes an expansion joint. In all of the cited references an expansion joint is clearly disclosed and none of the references disclose the material from which the pump or its elements are made being a plastic.

As taught by the applicant on page 4 of his specification from lines 19 through 36 an expansion joint is the spacing of the housing or element from the nearest component (i.e. the shaft) to allow it to expand as it accumulates heat. In each of the applied references the previous examiner has clearly highlighted this spacing arrangement which clearly suggests and satisfies the structural requirements of the applicants broadly claimed "expansion joint".

Furthermore, the applicant argues and makes reference throughout his arguments to the prevention from seizing during dry running, the condition of heat input to the housing elements and the desirable result of the gap seal between the housing parts being maintained constant during thermal expansion. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the prevention from seizing during dry running, the condition of heat input to the housing elements and the desirable result of the gap seal between the housing parts being maintained constant during thermal expansion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Conibear, Dickinson et al, Watson, Robin and Haworth disclose rotary pumps having an expansion joint.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/
Primary Examiner
Art Unit 3746

CGF
May 20, 2009